IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 58 OF 2003

1. Francisco Jose Hilario De Cruz,

2. Ana Rita Matildes de Costa de Cruz,

Represented by her attorney,
the Appellant No.1, both residing at
Borda, Rua S. Joaquim, Margao, Goa. ..... Appellants

V/s.

1. Arthur Caetano Joaquim Fernandes,

2. Francisco Charles Fernandes,

3. Cyril Philip Fernandes,

4. Iriton Mazarello,

5. Martha Esmail Rodrigues alias
Martha Rodrigues,

6. Maurilio Cota and his wife,

7. Mrs. Maria Fatima Purificacao Cabral,

8. Tulsi Gopinath Madkaikar (deceased)
through her legal representatives,

(a) Mahadev Gopinath Madkaikar (son),

(b) Sanjivani Gopinath Madkaikar (daughter)

Both residing at S. Joaquim Road,
Borda, Salcete, Goa.

9. Gopinath Modkaikar (now deceased),

10. Bicaro Rama Kundaikar,

11. Smt. Laxmi Loximona Naik,

All the above resident at Rua
S. Joaquim Borda, Margao, Goa.

12. Mrs. Joanita Fernandes,
resident of Reno Apartments,
S. Joaquim Road, Borda,
Margao, Goa. ..... Respondents

Mr. A. F. Diniz, Advocate for the appellants.

Mr. V. Menezes, Advocate for respondents No. 4, 5, 6, 7, 8 (a), 8 (b) 11 and 12.

CORAM : S.S. PARKAR, J.

DATE : 24TH JUNE, 2005.

ORAL ORDER :

Heard both sides. This appeal arises in the following background:

The appellants are original plaintiffs. The appellants had purchased land under Chalta No.1 of P.T. Sheet No.153 of City Survey Margao, in the year 1984. The suit was filed for declaration that they are owners of the said property and that the defendants should be restrained by permanent injunction from encroaching upon or interfering in the said property. The defendants are owners of adjoining plots which they have purchased.

2. The trial Court had framed three issues. Firstly, whether the plaintiffs prove that plaintiffs are owners of Chalta No.1, P.T. Sheet No.153, situated at Borda Margao. Secondly whether plaintiffs prove that defendants have encroached upon any portion of the plaintiffs' land and thirdly, whether the defendants prove that they are owners of the respective portions of the land allegedly encroached by the defendants. The first issue was answered in the affirmative, while the second issue was answered in the negative and the third issue was answered in the affirmative. Consequently, the suit was dismissed. The appellate Court confirmed the dismissal of the suit and, therefore, the present second appeal is filed in this Court

3. On behalf of the appellants, it is vehemently contended that though they have purchased the property having an area of 3304 sq. metres, in the resurvey their area is shown to be as 2969 sq. metres. Secondly, it is contended that the resurvey having been made without notice to the plaintiffs, is a nullity as per the provisions of Section 113 of the Land Revenue Code, 1968 which requires notice to be issued to the adjoining land owners while carrying out survey of the land. It is argued that since the notice was not given to the plaintiffs while carrying out the resurvey of the land, the report of the survey is a nullity which is not required to be challenged. He has placed reliance on the Judgment of the Supreme Court in the case of ***Kiran Singh and ors. v. Chaman***

Paswan and ors. (AIR 1954 SC 340).

4. In my view, no substantial question arises in this appeal, which is filed against the concurrent findings of facts by two Courts below. It is pointed out by the lower Courts that the sale deed of the plaintiffs did not mention area of the plot purchased by them, nor does the same give measurements or boundaries of the purchased plot. The said sale deed only gives the names of the surrounding land owners on the four sides. Secondly, instead of challenging the survey report, the plaintiffs filed suit for declaration and injunction against the defendants, who are the owners of the adjoining plots, without making the survey authorities as party to the suit. Instead of making survey authorities as party to the suit or adopting independent proceedings against the survey authorities, what is contended here is that in the absence of notice having been given to the plaintiffs, the resurvey conducted by the defendants is a nullity and, therefore, the survey report cannot be relied upon by the defendants. The survey authorities were required to be impleaded before the Court to decide whether the notice was given or not, or whether the survey was properly conducted or not in respect of the disputed property. There was not even an issue before the trial Court whether the survey was correctly made or not and/or whether notice was given to the plaintiffs at the time of conducting the survey of the plot of the defendants. After the resurvey was conducted by the survey Authorities,

orders were passed by the Inquiry Officer, which are not challenged as illegal in the suit. Merely because the findings given in favour of the appellants that they are owners of Chalta No.1 of P.T. Sheet No.153, does not mean that they are owners in respect of the area of the land admeasuring 3304 sq. metres, as claimed. On the contrary, the measurements mentioned in the sale deeds of the defendants correspond to the survey report. The Judgment of the Supreme Court in the case of ***Kiran Singh and ors. v. Chaman Paswan and ors.*** is not applicable in the circumstances of the case.

5. In the aforesaid circumstances, no substantial question of law arises in this second appeal which is filed against the concurrent findings of the two Courts below.

6. For the aforesaid reasons, the second appeal is dismissed.

S.S. PARKAR, J.

ssm.